IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2006

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A) No.2680 and 2681 of 2006

Commissioner of Income Tax,
Chennai. .. Appellant in both T.Cs.

Vs.

M/s.Meenakshi Narayanan
Investments Pvt. Ltd.,Old No.71,
New No.12,3rd Main Road,
Kasturba Nagar, Chennai. .. Respondent in both T.Cs.

Appeals under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal, Madras 'A' Bench dated 28.2.2006 made in ITA No.1507/Mds/2002 and C.O.No.101/Mds/2002 in ITA No.1507/Mds/2002, for the assessment year 1997-98. respectively against the order of the commissioner of Income Tax (Appeals)V in ITA 15/2002-03, dated 14.6.2002, against the order of the Asst Commissioner of Income Tax Company Circle IV (2) in PAN/GIR No. AAACC 3032B/148-ME dated 28.3.2002 respectively.

For Appellant : Mr.J.Narayanaswamy
Jr.Standing Counsel

For Respondent : Mr.Aravind P. Dattar, S.C.
For Mr.R.Sivakumar

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J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

The above tax case appeals are directed against the common order of the Income-tax Appellate Tribunal in ITA No. 1507/Mds/2002 and C.O.No.101/Mds/2002 in ITA No. 1507/Mds/2002, for the assessment year 1997-98.

2. The Revenue is the appellant. During the relevant assessment year, viz., 1997-98, the assessee filed a return declaring loss of Rs.9.58 lakhs. But, thereafter, the assessee filed a revised return declaring a total income of Rs.95.32 lakhs. On completing the assessment, the assessing officer accepted the

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claim of the assessee for exemption of non-competition fee. But, later, a notice under Section 148 of the Act was issued, as the assessing officer had reason to believe that income chargeable to tax had escaped assessment and after taking note of the objections of the assessee, the assessing officer passed the order of re-assessment. Aggrieved against the same, the assessee filed appeal before the Commissioner of Income-tax (Appeals), who, while holding the issue in favour of the assessee on merits, held re-opening of assessment as valid. Against the said order of the Commissioner, the Revenue as well as the assessee filed appeals before the Income-tax Appellate Tribunal and the Tribunal, by its common order dated 28.2.2006, without going into the merits of the case, held that assessement was re-opened on change of opinion and the re-assessment as void for delayed issuance of notice under section 143 (2) of the Act after one year. Against the said order of the Tribunal, the Revenue preferred the above appeals raising the following substantial questions of law:

> "1. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the re-assessment was only on account of change of opinion?
>
> 2. Whether on the facts and circumstances of the case, and considering the retrospective amendment to sec.148, the re-assessment could be said to be invalid as the notice u/s 143(2) was not issue within one year ?"

3. Heard both sides.

4. The issue raised in the first question with regard to re-opening the assessment merely on the basis of change of opinion is already covered against the Revenue by the decision of this Court in COMMISSIONER OF INCOME-TAX v. ANNAMALAI FINANCE LTD. [(2005) 275 I.T.R. 451]., wherein this Court, held as follows:-

> " .. that Section 147 of the Act does not postulate conferment of power upon the Assessing Officer to initiate reassessment proceedings upon a mere change of opinion. The Assessing Officer proposed to reopen the assessment for the year 1994-95 purely based on the change of opinion, namely, the change in the method of accounting of overdue interest on case or actual receipt basis, when the assessee was following the mercantile system of accounting. The reassessment proceedings were not valid."

4. Admittedly, in the instant case, on completing the original assessment, the assessing officer accepted the exemption claimed by the assessee on non competition fee. But, thereafter, the assessing officer reopened the assessment purely based on the change of opinion that income derived from competition fees, which are chargeable to tax, had escaped assessment. Therefore, applying the ratio laid down by the Apex Court in the case of Annamalai Finance Ltd., cited supra, we hold that reopening of assessment merely on the basis of change of opinion is

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invalid and accordingly, the first question of law is answered against the Revenue.

5. In view of the above conclusion with regard to question No.1, we do not think it necessary to answer the second question, as it is consequential in nature.

Accordingly, finding no substantial question of law arises for consideration, the above Tax Case Appeals stand dismissed.

sra

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Income Tax Appellate Tribunal
Madras Bench "A" Chennai.

2. The Commissioner of Income-
Tax (Appeals V), Chennai 34.

3. The Assistant Commissioner of
Income-tax Company, Circle-IV(2),
Chennai.34.

4. The Asst Registrar,
Income Tax Appellate Tribunal,
Besant Nagar, Rajaji Bhavan,
Chennai 90.

5. The Commissioner of Income Tax,
Chennai.

+ 1 cc to M/s. Pushya Sitaraman, Sr SC for IT SR No. 62929

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TC (A) Nos.2680 and 2681
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